IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 299 OF 2006

Shri Abhay Vasant Sawant ...Applicant.

v/s

State of Maharashtra
Through Sr. Inspector of
Police Bhoiwada Police Station,
Mumbai. ...Respondent.

Mr. A.P. Mundargi for the applicant.

Mr. Rajesh More, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 25th January, 2006

P.C.:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant has an apprehension that he is likely to be arrested in connection with the complaint which is filed vide C.R. No.13 of 2006 for the offence punishable under section 406, 420 of the Indian Penal Code. It is alleged that the applicant and the other accused had collected money from the complainant and others and had given the assurance that they would provide flats in a building which was to be constructed at the address and the site which was mentioned in the agreement which was executed

between the builders and the complainant. It is alleged in the plaint that the present applicant was the Secretary of the said Society. Initially, in the year 2004, a complaint was filed against the Builders who promised to return the amount to the various persons who had been duped and accordingly the cheques were issued by the builders to these persons. However, those cheques were dishonoured and the complaint was filed under section 138 of the Negotiable Instruments Act which is pending in the Court of Metropolitan Magistrate, Mumbai. In the meantime, the present complaint has been filed against the applicant and the allegation is made that he was the Secretary of the said Society who had received the amount from the complainant and had paid the amount to the builders.

3. The learned Counsel appearing on behalf of the applicant has submitted that the applicant was also one of the victims for the fraud that was perpetuated by the builders and, therefore, he was not concerned in any way with the transaction between the complainant and the said builders. He invited my attention to the complaint which has been filed as also the agreement which was executed by him with the said builders wherein he had paid an amount of Rs

3,00,000/- to the builders.

4. The learned APP, however, pointed out from the complaint that the entire transaction had taken place in the court premises where the applicant was working as a clerk. He pointed out that in the complaint there is a specific reference that the applicant was the Secretary of the Society in which the amount was invested by various persons. Considering the facts of this case, in my view, this is not a fit case for grant of an anticipatory bail. Though, initially, the complaint was filed in 2004 and the present complaint is filed against the applicant in January 2006, the fact remains that the allegations are there against the applicant and he is shown as one of the accused in the said transaction. In my view, therefore, this is not a fit case for grant of an anticipatory bail. It is a settled position in law that the parameters for granting anticipatory bail and regular bail are different. Hence, no case is made out for grant of anticipatory bail. The application is rejected.

V.M. KANADE, J.